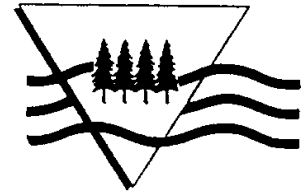


NALGEP

National Association of
Local Government Environmental Professionals



TESTIMONY ON LOCAL GOVERNMENT PERSPECTIVES ON FEDERAL INCENTIVES FOR BROWNFIELDS CLEANUP AND REDEVELOPMENT

PRESENTED BY DAVID LEVY, BROWNFIELDS PROJECT COORDINATOR,
CITY OF BALTIMORE, MARYLAND

ON BEHALF OF:

THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS
“NALGEP”

SUBMITTED TO:
THE SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS
HOUSE COMMITTEE ON COMMERCE

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NALGEP BROWNFIELDS ADVISORY COMMITTEE

NALGEP would like to give special thanks and appreciation to our Brownfields Advisory Committee. Comprised of 14 of the nation's top local government brownfields leaders, the Advisory Committee members have provided critical leadership in the development and implementation of this project and report. They devoted substantial time and energy to developing the overall project game plan, the interview questions, and the project findings. They offered invaluable guidance, reviewed and commented on several drafts of the report and participated in numerous conference calls to discuss the various aspects of the project findings.

The members of the NALGEP Brownfields Advisory Committee are:

Mark Gregor, Manager, Division of Environmental Quality, City of Rochester, NY

Joseph James, Director of Economic Development, City of Richmond, VA

David Levy, Brownfields Project Coordinator, City of Baltimore, MD

Judith Lorbeir, Environmental Coordinator, City of Tacoma, WA

Lorrie Louder, Director of Industrial Development, Saint Paul Port Authority, Saint Paul, MN

Lisa Maack, Deputy Director, Mayor's Office of Environmental Affairs, City of New Orleans, LA

Richard Mendes, Deputy City Manager, City of Cincinnati, OH

Douglas C. MacCourt, Environmental Manager, Office of Transportation, Portland, OR, and
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Beverly Negri, Brownfields Liaison, Economic Development Department, Dallas, TX

Jacqueline Ritchie, Brownfields Coordinator, Environmental Services Cabinet, Boston, MA

Mary Beth Schmucker, Brownfields Coordinator, City of Indianapolis, IN

Martin Soffer, Environmental Review Officer, Planning Commission, City of Philadelphia, PA

Gary Stephens, Deputy Director, Department of Natural Resources Protection, Broward County, FL

William Trumbull, Assistant Commissioner, Department of Environment, City of Chicago, IL

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Chairman Oxley, Congressman Manton and members of the Subcommittee, the National Association of Local Government Environmental Professionals, or “NALGEP,” appreciates the opportunity to present this testimony on the views of local government officials from across the nation on the need for additional federal legislative and regulatory incentives for the cleanup, redevelopment and productive reuse of brownfields sites in local communities. NALGEP represents local government officials responsible for ensuring environmental compliance, and developing and implementing environmental policies and programs. NALGEP’s membership consists of more than 50 local government entities located throughout the United States, and includes environmental managers, solid waste coordinators, public works directors and attorneys, all working on behalf of cities, towns, counties and municipal associations.

In 1995, NALGEP initiated a brownfields project to determine local government views on national brownfields initiatives such as the EPA Brownfields Action Agenda. The NALGEP Brownfields Project has culminated in a report, entitled ***Building a Brownfields Partnership from the Ground Up: Local Government Views on the Value and Promise of National Brownfields***

Initiatives, which was issued on February 13, 1997 to the EPA and other agencies, congressional staff and the public. As a result of this project, NALGEP is well qualified to provide the Subcommittee with a representative view of how local governments, and their environmental and development professionals, believe the nation must move ahead to create long-term success in the revitalization of urban brownfields properties.

NALGEP's testimony will focus on the findings of its *Building a Brownfields Partnership from the Ground Up* Report, particularly with respect to liability, resource and other legislative opportunities to promote brownfields renewal. The NALGEP Brownfields Report was developed under the leadership of a 14-member Brownfields Advisory Committee composed of local government brownfields officials from Environmental Protection Agency ("EPA") brownfields pilot cities and other communities with established brownfields programs. NALGEP worked with the Committee to develop a comprehensive brownfields interview, which was conducted with numerous brownfields leaders across the nation. Based on these interviews and a series of collaborative discussions with the Advisory Committee, NALGEP developed report findings on:

- **Clarifying and Limiting Liability to Promote Brownfields Cleanup and Redevelopment**

Building a National Brownfields Partnership: The Next Phase of the Federal Agenda from a Local Government Perspective

- **Improving Communication Among Local, State, and Federal Brownfields Officials**
- **Legislative Opportunities to Stimulate Brownfields Cleanup and Redevelopment**

The NALGEP Brownfields Report itself best conveys the views of NALGEP and its Brownfields Advisory Committee on the opportunities for the federal government to promote brownfields renewal. NALGEP therefore attaches the Report to this testimony, and summarizes key points below.

The cleanup and revitalization of "brownfields" represents one of the most exciting, and most challenging, environmental and economic initiatives in the nation. Brownfields are abandoned, idled, or

under-used industrial and commercial properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, federal and state incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides many environmental, economic and community benefits including the following:

- expediting the cleanup of thousands of contaminated sites;
- renewing local urban economies by stimulating redevelopment, creating jobs and enhancing the vitality of communities; and
- limiting sprawl and its associated environmental problems such as air pollution, traffic and development of rapidly disappearing open spaces.

A 33-acre redevelopment project provides an excellent example of how a brownfields initiative is helping to revitalize Baltimore's local economy and environment. More than 75 years of operation on this site by a large smelting and refining company left contamination from heavy metals and other hazardous waste, and a mostly unused property. Through cooperation among the city of Baltimore, the state of Maryland and the federal government, the private developer's \$1 million in remediation expenses has leveraged an \$11.5 million investment producing more than 200 temporary remediation and construction jobs and 180 full-time permanent jobs. This is an example of the success stories that we can create through brownfields revitalization.

This year presents an exciting opportunity to build upon the initial successes of EPA's Brownfields Action Agenda and establish a long-term, sustainable federal/local brownfields partnership. The timing is especially good given that: (1) many communities are emerging from the pilot stage of the EPA Brownfields program; (2) several federal agencies are preparing to expand the Administration's commitment to brownfields redevelopment by launching the **BROWNFIELDS**

NATIONAL PARTNERSHIP AGENDA; and (3) Congress is considering opportunities for legislative solutions to address local government brownfields needs.

Local government leaders are a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership “from the ground up.” The NALGEP Brownfields Report represents the views of these officials from communities actively involved in brownfields revitalization. Overall, NALGEP’s key findings related to legislative opportunities in the brownfields area are that (a) EPA should delegate the authority to limit liability and issue no further action decisions for less contaminated brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and environment; (b) local communities need increased funding to ensure long-term brownfields success, including grants, loans, tax incentives and public/private financing partnerships for brownfields assessment, cleanup and redevelopment; and (c) the federal government should identify and propose corrections for federal laws and policies which provide incentives to develop in “greenfields” rather than brownfields.

I. Clarification of Superfund Liability at Brownfields Sites

On the issue of federal Superfund liability associated with brownfields sites, NALGEP has found that the Environmental Protection Agency’s overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal, and have contributed to the cleanup of specific sites throughout the nation. It is clear that these EPA policies, and brownfields development in general, are most effective in states with effective voluntary or independent cleanup programs that have led to the negotiation with EPA of “State Memoranda of Agreement” deferring liability clarification authority to those states. Therefore, NALGEP finds that Congress should enable the EPA to delegate authority to limit liability and issue no further action

decisions for brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and the environment.

A strong delegation of EPA liability clarification authority to approved states is critical to the effective redevelopment of local brownfields sites. Such delegation will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of federal enforcement personnel. Parties developing brownfields want to know that the state can provide the last word on liability, and that there will be only one “policeman,” barring exceptional circumstances.

At the same time, local officials are also concerned about delegating too much cleanup authority too fast to states. States vary widely in the technical expertise, resources, staffing, statutory authority and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government will bear the largest brunt resulting from any public health emergency or contamination of the environment. NALGEP believes that the U.S. EPA has a key role to play in ensuring that liability authority over brownfields sites should only be delegated to states that demonstrate an ability and commitment to ensure protection of public health and the environment in the brownfields redevelopment process.

To foster expanded redevelopment of brownfields sites while ensuring the protection of public health and the environment, NALGEP finds that there should be three components to the EPA brownfields delegation program. First, the law should clearly distinguish between Superfund NPL-caliber sites and less contaminated sites that can be put on a “brownfields track.” The delegation of liability authority to states should focus on these non-NPL caliber sites. Putting non-NPL caliber sites on a brownfields track will allow the application of EPA and state policy tools specifically designed to

foster expedited, cost-effective brownfields redevelopment. Several of these brownfields track tools are suggested by NALGEP in Report Section 1, Finding 4.

Second, NALGEP finds that EPA delegation of liability authority over brownfields sites should be granted only to state cleanup programs that meet minimum criteria to ensure protection of public health and the environment. EPA should also have the ability to withdraw a state's delegation if these criteria are not being met. In its report, NALGEP suggests the following types of criteria for state delegation:

1. **Standards to ensure adequate site assessments early in the process.** Good site assessments will help prevent unanticipated problems from surfacing, and facilitate efforts to direct particular sites into a "brownfields track."
2. Adequate state **technical expertise, staff and enforcement authority** to ensure effective implementation of cleanup activities.
3. An **adequate method to distinguish between NPL-caliber sites and those less-contaminated sites** that can be placed on a brownfields track.
4. Use of **risk-based cleanup standards**, that can be tied to **reasonably anticipated land use**, established through an adequate public approval process.
5. **Institutional controls** such as deed restrictions, zoning requirements or other mechanisms that are enforceable over time to ensure that future land uses tied to certain cleanup standards are maintained.
6. Commitment to **establish community information and involvement processes**, and assurance that state and local brownfields activities will consider community values and priorities.
7. Commitment to build the capacity, through training and technical assistance, of **local government health and environmental agencies** to effectively participate in the brownfields development process and ensure protection of public health and environment.
8. **Adequate mechanisms** to address unanticipated cleanups or orphaned sites where liability has been eliminated.
9. Ability of EPA to **selectively audit** state liability certifications to ensure that the state program is fulfilling its responsibilities to protect public health and the environment.

In addition, NALGEP has developed a finding with regard to EPA's ability to reopen its involvement at a particular brownfields site in a delegated state. An EPA reopener for particular sites

is necessary to ensure that EPA can become involved at any sites at which the state is unable or unwilling to adequately respond to a substantial and imminent threat to public health or the environment. At the same time, the reopener must be sufficiently limited to permit the state to take the lead role at brownfields sites, and to give confidence to developers, prospective purchasers, lenders and local governments that EPA will not improperly hinder or interfere in state liability decisions. Therefore, in delegating brownfields authority for non-NPL caliber sites to the states, NALGEP proposes that EPA should provide that it will not plan or anticipate further action at any sites unless, at a particular site, there is: (1) an imminent and substantial threat to public health or the environment; and (2) either the state response is not adequate or the state requests U.S. EPA assistance.

II. Ensuring Adequate Resources for Brownfields Revitalization

With regard to local government resource needs for brownfields revitalization, NALGEP finds that to ensure long-term success on brownfields, local governments need additional federal funding for site assessment programs, remediation programs and economic redevelopment. The costs of site assessment and remediation can create a significant barrier to the redevelopment of brownfields sites, if the local government is not supported by the leverage of federal and private resources. In particular, the costs of site assessment can pose an initial barrier that drives development away from brownfields sites. With this initial barrier removed, localities are much better able to put sites into a development track. In addition, the allocation of public resources for site assessment can provide a signal to the development community that the public sector is serious about resolving liability issues at a site and putting it back into productive reuse.

Moreover, it cannot be doubted that the use of public funds for the assessment and cleanup of brownfields sites is a smart investment. Public funding can be leveraged into substantial private sector resources. Investments in brownfields yield the economic fruit of increased jobs, expanded tax bases

for cities, and urban revitalization. And the investment of public resources in brownfields areas will help defer the environmental and economic costs that can result from unwise, sprawling development outside of our urban centers.

Federal funding for brownfields revitalization and reinvestment should be provided from a variety of sources to meet the variety of local government needs on this issue, including:

- **Federal grants**, such as the EPA Brownfields Pilot grant program, economic redevelopment grants by the Department of Commerce, Economic Development Administration, and funding for transportation projects in brownfields through the Intermodal Surface Transportation Efficiency Act. NALGEP endorses the Administration's intention to fund additional brownfields pilot grants.
- **Federal Technical Assistance** from EPA for site remediation, pollution prevention activities and the use of innovative environmental technologies;
- **Loans and loan guarantees**, including through Department of Housing and Urban Development Section 108 funds, and through federal funds to capitalize city and state Revolving Loan Funds for brownfields site assessments and cleanup; and
- **Tax credits and deductions** for expenses related to the assessment and cleanup of brownfields sites.

III. Correcting Incentives That Promote Greenfields Development Over Brownfields Redevelopment

With regard to the need to create federal incentives to promote brownfields redevelopment over development in "greenfield" areas, NALGEP finds that the continued inactivity at urban brownfields sites, coupled with development in non-urban "greenfields" areas, creates environmental and economic distress for both cities and the regions surrounding urban areas. Brownfields renewal can clearly provide urban benefits including the cleanup of environmentally contaminated sites, and the creation of economic vitality, jobs and a stronger sense of community. At the same time, brownfields

activities that reduce ex-urban sprawl can also provide regional and ex-urban benefits, such as reduced mobile source air pollution, reduced non-point and point source water pollution, decreased pressure on infrastructure, protection of valued natural areas, increased regional cooperation and the reduction of urban problems (*e.g.*, crime) that can affect areas outside of distressed cities and towns.

Even with the federal Brownfields Agenda and state and local programs to encourage reuse of brownfields, there are a variety of factors that encourage development in greenfields over brownfields. These incentives for greenfields development include: transportation infrastructure and incentives in non-urban areas, including federal transportation funding and policies that favor highways over mass transit; lower quality of life and quality of schools in urban areas; disincentives for urban development from the regulatory requirements associated with pollutant “nonattainment areas” under the Clean Air Act; and lack of regional-urban coordination.

Therefore, the federal government should identify federal policies that favor greenfields over brownfields and identify opportunities to correct these disincentives, including:

- Expansion of ISTEA authority to include transportation spending for brownfields revitalization, and increased overall funding for mass transportation systems, including through ISTEA;
- The National Environmental Policy Act should reflect the environmental and cultural benefits of brownfields redevelopment over development in greenfields by requiring that environmental impact statements consider alternatives that would promote brownfields development over greenfields development.
- Inter-agency coordination in the use of federal funding for urban brownfields activities, in order to streamline and conform the burdensome procedural requirements associated with different funding sources and better allow the implementation of community-based environmental protection. In other words, local governments with comprehensive urban development programs should be better able to aggregate various funding sources for the implementation of their community environmental priorities, without the undue burden that can result from divergent procedural requirements and standards associated with different funding sources.

IV. Conclusion

In conclusion, local governments are excited to work with the federal government to promote the revitalization of brownfields, through a combination of state delegations of liability authority,

increased federal investment in community revitalization, and innovative legislative and regulatory incentives designed to build a brownfields partnership from the ground up. NALGEP thanks the Subcommittee for this opportunity to testify, and looks forward to working with you as the process moves forward.